Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
MCI WorldCom, Inc.	)	
	)	
Petition for Expedited Declaratory Ruling Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) of the Telecommunications Act of 1996 and Section 51.809 of the Commission's Rules	)	CC Docket No. 00-45

COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
IN SUPPORT OF THE PETITION FOR DECLARATORY RULING
OF MCI WORLDCOM

The Competitive Telecommunications Association ("CompTel")[1] submits these comments in support of the Petition for Declaratory Ruling by MCI WorldCom in response to the Commission's Public Notice in the above-captioned proceeding.[2] MCI WorldCom seeks clarification from the Commission that the role of states in facilitating adoptions of interconnection agreements pursuant to the "most favored nations" ("MFN") provisions of Section 252(i) of the Communications Act ("the Act") is limited to providing procedural rules of adoption and entertaining legitimate challenges to adoptions by ILECs, which can only be based on those reasons for challenge articulated

[1] With over 300 members, CompTel is the leading industry association representing competitive communications firms and their suppliers. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future.

[2] *In the Matter of MCI WorldCom, Inc., Petition for Expedited Declaratory Ruling Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) of the Communications Act and Section 51.809 of the Commission's Rules*, Public Notice, CC Docket No. 00-45 (rel. March 16, 2000) ("*MCI WorldCom Petition*" or "*Petition*").

in Commission Rule 51.809(b).[3] The Commission should grant MCI WorldCom's Petition as well as further clarify that states should develop procedural rules for implementing the Commission's Rules that discourage ILECs from making frivolous objections to delay MFN adoptions.

I. MCI WorldCom's Petition Should Be Granted Because Commission Clarification Is Necessary to Ensure that Section 252(i) of the Act Will Function as Intended By Congress and Commission Rules

The Commission should grant MCI WorldCom's Petition, because doing so would reaffirm the legal rights that Congress created by including Section 252(i) in the Act. As MCI WorldCom explains in its Petition, the Commission, in its Rules and prior interpretations of Section 252(i), has consistently expressed its expectation that adoptions of existing agreements pursuant to this Section should be relatively quick and simple.[4] Adoption of existing interconnection agreements should be a simple and quick process because of both the limited grounds for ILEC objection, and the fact that a second state approval of a previously approved agreement is not necessary.[5] Moreover, there is no requirement, or authorization, in either the statute or the Commission's Rules that gives

---

[3] 47 C.F.R. § 51.809(b), which provides that an ILEC can only be excused from honoring an adoption under Section 252(i) if it promptly demonstrates that: 1) the costs of providing interconnection to the requesting carrier are greater than the costs of providing interconnection to the carrier that originally negotiated the agreement; or 2) provisioning a particular service to the requesting carrier would be technically infeasible.

[4] MCI WorldCom Petition, pp. 14-19.

[5] MCI WorldCom notes that the state where adoption is sought has already approved the agreement which is the subject of the 252(i) adoption. *Id.*, p. 20. CompTel notes, however, that this example does not encompass the universe of agreements which are the proper subject of adoption under Section 252(i) or the Commission's Rules. The plain language of both only requires that the agreement sought to be adopted must have already been approved by a state commission. This requirement, combined with the judicial review provided for in Section 252(e)(6), ensures that the agreement complies with the Act. Thus, any agreement by which the ILEC is bound, that has been approved by a state commission, is required to be made available under Section 252(i) and the Commission's Rules.

states the authority to approve agreements that meet the criterion for adoption under Section 252(i).

Despite the fact that neither Congress, nor the Commission, has authorized states to establish "approval" processes for agreements adopted pursuant to Section 252(i), MCI WorldCom correctly notes that Commission clarification is needed on this issue. In its Petition MCI WorldCom explains that some states have established procedures for adopting already-approved agreements that are inconsistent with the plain language of the statute and the Commission's implementing rules.[6] In those states, an intransigent ILEC can "legitimately" delay MFN adoptions by claiming that it is only following state requirements. MCI WorldCom also notes that most states have articulated no procedures by which requesting carriers may exercise their rights under Section 252(i).[7]

The result of these disparate, confusing, sometimes burdensome, sometimes non-existent state procedures is that CLECs face greater uncertainty and must incur greater litigation costs in order to get agreements that have been approved, and that should be available simply for the asking.[8] Consequently, ILECs are able to exploit this confusion, and, thereby, delay entry and raise competitors' costs simply by engaging the regulatory process.[9]

MCI WorldCom's experiences are neither unique, nor of trivial consequence to consumers, who suffer when competitive entry is delayed. The General Accounting Office, in a recent report on the development of local competition, cited difficulty in

---

[6] Petition, pp. 5-9.
[7] *Id.*, p. 5, n. 5.
[8] *Id.*, p. 10.
[9] *Id.*, p. 9.

obtaining interconnection agreements as one factor that has limited the development of competition.[10]

The GAO observations are consistent with the economic literature, which suggests that, as a means of limiting competitive entry, an incumbent monopolist is more likely to use litigation before regulatory, licensing, and other adjudicatory bodies than other predatory practices, such as below-cost pricing, because its rewards are immediate and success does not depend on the speculative realization of above-cost prices in some future period. The monopolist, in these cases, can protect his supra-competitive prices and raise new entrants' costs simply by engaging the process. Even ultimately unsuccessful efforts can produce an immediate benefit in terms of delaying new entry and raising rivals' costs.[11] The Commission, in adopting its rules implementing Section 252(i), also noted that the ILECs, themselves, in arguing against a "pick and choose" interpretation of this Section, recognized that such an interpretation would provide an incentive to delay the negotiation process.[12]

CompTel provides, as an attachment to these Comments, a decision by the Indiana Utility Regulatory Commission ("IURC") in favor of CompTel member, Golden Harbor of Indiana, who was seeking adoption of an interconnection agreement between Ameritech and AT&T. The decision, in extending the adopted agreement by six months,

---

[10] *United States General Accounting Office, Report to the Subcommittee on Antitrust, Business Rights and Competition, Committee on the Judiciary, U.S. Senate,* "Telecommunications: Development of Competition in Local Telephone Markets", GAO/RCED-00-38, January 25, 2000. pp.25-26.

[11] For a more complete discussion of the economic effects of the strategy of predation through governmental process *see* Robert Bork, The Antitrust Paradox 47-49 (1978); T. Balmer, *Sham Litigation and the Antitrust Laws*, 29 BUFF. L. REV. 39 (1980); H. Hovencamp, *Antitrust Policy After Chicago*, 84 MICH. L REV. 213, 276-280 (1986).

provides an excellent illustration of the difficulties, caused by RBOC intransigence and unclear state procedures, that competitive carriers can encounter in trying to exercise their right of adoption under Section 252(i).

In this example, Golden Harbor gave notice of adoption to Ameritech and the IURC on October 13, 1998. Despite numerous interventions by the IURC, Golden Harbor did not actually get an effective agreement with Ameritech until sometime after May 11, 1999. Then, Golden Harbor had to undertake another six months of litigation just to get the IURC to extend the agreement by the amount of time that Ameritech's unreasonable delays had initially cost Golden Harbor!

Therefore, given the existence of such powerful incentives to impose costs and delay in the process of obtaining interconnection agreements, MCI WorldCom has requested the Commission make some additional clarifications regarding the process through which carriers may effect a timely, expeditious adoption pursuant to Section 252(i).

II. The Commission Should Urge States To Implement Expedient Procedures For Resolving Section 51.809(b) Objections and Which Discourage Unreasonable Delay Tactics

MCI WorldCom attempts to reduce some of the ILEC incentive to delay MFN adoptions by asking the Commission not only to reaffirm that adopted agreements do not require state commission approval, but, also, that the Commission clarify the limited grounds under which an ILEC may legitimately refuse adoption by a requesting carrier. MCI further requests that the Commission clarify that it expects such objections to be

---

[12] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 16139, ¶ 1313 (1996).

considered on an expedited basis by the state. In order to further limit the incentives of ILECs to assert frivolous objections to adoptions of agreements under Section 252(i), MCI also requests that the Commission encourage states to make adoption of the interconnection agreement retroactive to the date adoption was requested, where the state ultimately determines an ILEC objection to be without merit.[13] MCI WorldCom also requests that the Commission clarify that only those provisions that are the grounds for legitimate objection can be considered by the state, and that the other, non-objectionable portions of the agreement should be effective immediately.[14]

CompTel supports MCI WorldCom's requests for these interpretations of the Act and the Commission's Rules. The clarifications that MCI requests will, undoubtedly, reduce the incentives for ILECs to assert frivolous objections in order to delay a CLEC's right of MFN adoption. If states were to require that the adoption would apply retroactively where objections proved unfounded, and, at the same time, allow for the non-objectionable portions of the adopted agreements to be effective immediately, then much of the delay benefit of the litigation strategy is lost.

However, even if the Commission grants the present petition, not all of the incentive to delay through litigation is removed. The ILEC may still have an incentive to raise objections to MFN adoptions in order to delay implementation of certain provisions, and to impose costs on its rival. Therefore, the Commission should also urge states to make a determination as part of each unsuccessful challenge to an MFN adoption as to whether the asserted objection was "objectively baseless," or "sham" litigation designed

[13] Petition, pp. 22-23.
[14] *Id.*, pp. 23-24.

to delay entry and impose costs on a competitor.[15] Because the line of case law dealing with protected speech when such speech is undertaken to injure competitors through the government, or judicial, process focuses on the type of problem identified by MCI WorldCom in its Petition, CompTel believes that it would be appropriate for the Commission to encourage states to evaluate litigation which has the effect of delaying entry or raising competitor's costs under this same criteria.

The most recent Supreme Court decision which defines the "sham" exception in an adjudicatory context is *Professional Real Estate Investors, Inc. v Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993) ("*PRE*"). In *PRE*, the Court articulated a two-prong test for determining whether litigation was sufficiently a "sham" (and would, thus, justify imposing antitrust liability). The first prong of the test is that "the litigation must be determined to be 'objectively baseless'—that a reasonable litigant could not have reasonably expected success on the merits. . . ."[16] This definition is easy to use, and does not require the state commission to undertake any inquiry beyond that already necessary

---

[15] The historical genesis for the term "sham" litigation comes from *Eastern R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961)("*Noerr*"), where the Supreme Court held that efforts by railroads to pass legislation intended to increase the costs of their competitors, the plaintiff trucking firms, were immune from Sherman Act antitrust scrutiny because "[t]he Right to Petition is one of the freedoms protected by the Bill of Rights and we cannot. . . lightly impute to Congress an intent to invade these freedoms." *Id.* at 138. The *Noerr* Court did, however, acknowledge that there may be situations where the conduct alleged "is a mere sham to cover what is actually nothing more than an attempt to interfere *directly* with the business relationships of a competitor and the application of the Sherman Act would be justified." *Id.* at 144 (emphasis added).

[16] *PRE*, at 60. The second prong of the test is "if the litigation was objectively baseless, was it intended to interfere directly with a competitor's business relationships through the use of the governmental *process*—as opposed to the *outcome* of the process. *Id.* at 60-61 (citing *Noerr* and *Columbia v. Omni Outdoor Advertising*, 499 U.S. 365 (1991)(emphasis in original)). A determination on the second prong requires expanded discovery of the previously-privileged attorney-client information, and is only necessary to establish an antitrust violation.

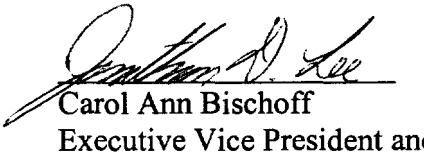
to decide the asserted objections.

While CompTel recognizes that state commissions lack the subject matter jurisdiction to entertain antitrust claims, the benefit of encouraging such an inquiry, in conjunction with a review of objections to MFN adoptions, will be either to reduce frivolous objections, or, to provide greater transparency to state and federal antitrust enforcement authorities. For this reason, CompTel believes that such an inquiry, if conducted on a routine basis, would dramatically reduce unwarranted objections without any additional cost, or delay, to the state, the ILEC, or the CLEC.

CONCLUSION

The Commission can, by granting the requested clarifications and declaratory ruling, eliminate regulatory barriers to entry that are significantly attributable to nothing more than confusion over how states should be implementing the Commission's Rules. Therefore, CompTel urges the Commission to grant the MCI WorldCom Petition.

Respectfully submitted,



Carol Ann Bischoff
Executive Vice President and
General Counsel
Jonathan D. Lee
Vice President, Regulatory Affairs
The Competitive Telecommunications Association
1900 M Street, N. W.
Suite 800
Washington, D.C. 20036

March 31, 2000

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI WorldCom, Inc.	)	
	)	
Petition for Expedited Declaratory Ruling Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) of the Telecommunications Act of 1996 and Section 51.809 of the Commission's Rules	)	CC Docket No. 00-45

ATTACHMENT TO COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

DECISION OF THE INDIANA UTILITY REGULATORY COMMISSION
REGARDING THE PETITION OF GOLDEN HARBOR OF INDIANA
TO ADOPT AN INTERCONNECTION AGREEMENT

STATE OF INDIANA

ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

GOLDEN HARBOR OF INDIANA, INC. PETITIONING COMMISSION ACTION REGARDING ADOPTION OF INTERCONNECTION AGREEMENT PURSUANT TO SECTION 252(e) AND 252(i) OF THE TELECOMMUNICATIONS ACT OF 1996 TO ESTABLISH AN INTER-CONNECTION AGREEMENT WITH INDIANA BELL TELEPHONE COMPANY, INCORPORATED, D/B/A AMERITECH INDIANA.	)	CAUSE NO. 41268-INT 05 APPROVED: JAN 1 9 2000

BY THE COMMISSION:
David E. Ziegner, Commissioner
Claudia J. Earls, Administrative Law Judge

On October 13, 1998, Golden Harbor of Indiana, Inc. "(Golden Harbor") filed with the Commission a petition requesting that Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech Indiana") be ordered to comply with Section 252(i) of the federal Telecommunications Act of 1996 (the "Act"). Golden Harbor notified Ameritech Indiana that it intended to adopt an interconnection agreement between Ameritech Indiana and AT&T Communications of Indiana, Inc. ("AT&T) (hereinafter referred to as the "Agreement") that was approved by the Commission in Cause No. 40571 INT 01. On November 11, 1998, Ameritech Indiana filed its Answer, admitting that it would not allow Golden Harbor to adopt the AT&T Agreement without the addition of "clarifying" footnotes. In our December 16, 1998 Order approving the adoption of the agreement, we found that the Agreement between Ameritech Indiana and AT&T was an agreement approved by this Commission pursuant to Section 252 of the Act that should be made available to other carriers pursuant to Section 252(i) of the Act.

In our December 16, 1998 Order, we went on to state:

> In sum, upon a review of the proposed Adoption, and of the record in this matter considered as a whole, the Commission finds that the Applicant's request for approval of the Adoption pursuant to Section 252 of the Act is now appropriately before the Commission. Further, it finds the Adoption Request is reasonable and should be approved, since it does not discriminate against a telecommunications carrier not a party to the arrangements and its implementation is consistent with the public interest, convenience and necessity. Further, we find AMERITECH and GOLDEN HARBOR should submit any amendments to the Agreement to the Commission for approval. We would note that we are aware that the interconnection point and effective date of the agreement would obviously differ and the parties are

ordered to cooperate in designation of the interconnection point and the effective date. **In all other respects, the parties must abide by the specific language contained in the previously approved agreement."** Order, p. 3-4. (Emphasis added.)

Ameritech did not request reconsideration of the Commission's Order, nor did it appeal the Order. On January 18, 1999, Ameritech Indiana sent a "discussion Draft" of a proposed Interconnection Agreement to Golden Harbor which still contained the "clarifying" footnotes. On February 15, 1999, Ameritech Indiana sent another "discussion Draft" of a proposed Interconnection Agreement to Golden Harbor which still contained "clarifying" footnotes. On March 24, 1999, Ameritech Indiana again refused to sign the Agreement without the "clarifying" footnotes. On April 1, 1999, Golden Harbor filed a request with the Commission to mandate Ameritech's compliance with the Commission's December 16, 1998 Order. On April 20, 1999, an attorneys' conference was held, at which time Ameritech was informed that no Interconnection Agreement was required. All that was to be filed by the parties was a designation of the interconnection point and the date of implementation, not a newly executed agreement. On May 3, 1999, Ameritech Indiana and Golden Harbor agreed to the interconnection point and implementation date for the interconnection agreement between Ameritech Indiana and Golden Harbor and so notified the Commission.

On July 9, 1999, Golden Harbor filed a "Request for Order to Require Ameritech to Make Terms of Agreement Available for a Reasonable Period of Time and to Remedy Ameritech's Anticompetitive Behavior" ("Request for Extension"). On July 26, 1999, Ameritech Indiana filed a Motion to Strike Golden Harbor's Request for Extension. On October 25, 1999, the presiding officer issued a docket entry granting a Motion to Consolidate for Hearing, the evidentiary hearing in this Cause with an evidentiary hearing in Cause No. 41268-INT 09 regarding a similar complaint between FBN Indiana, Inc ("FBN") and Ameritech. The Docket Entry set a hearing for November 19, 1999 at which time the parties were to present evidence regarding Ameritech's alleged anti-competitive behavior and oral argument regarding the propriety of the Complainants' requests for extension.

Based upon the applicable law and evidence herein, the Commission now finds:

1. Jurisdiction and Statutory Standard for Review. Section 252(a)(1) of the Act provides that "an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) and (c) of Section 251" for interconnection, services, or network elements. We find Ameritech to be an "incumbent local exchange carrier" as that term is broadly defined in Section 251(h) of the Act and as used in Section 252(a) of the Act. We further find that Golden Harbor is a "telecommunications carrier" as that term is defined in Section 3(a)(49) of the Act and as used in Section 252 of the Act. Pursuant to Section 252(i), "a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Pursuant to I.C. 8-1-2-5, every public utility shall for a reasonable compensation permit the use of its property by any other public utility whenever public convenience and necessity require

such use. Such use so ordered and such physical connection so ordered shall be made and such conditions and compensations may be prescribed by the Commission if the parties fail to agree. Pursuant to I.C. 8-1-2-58, the Commission may conduct an investigation into the actions of any public utility. Pursuant to I.C. 8-1-2-107, any public utility which does anything or omits to do something that is required by the Act, shall be liable to any person injured thereby. Pursuant to I.C. 8-1-2-115, it is the Commission's duty to enforce the provisions of Indiana law and "all other laws, relating to public utilities."

The Commission provided statutory notice of the hearing held in this Cause pursuant to I.C. 8-1-1-8.

Based upon the foregoing, the Commission finds that it has jurisdiction over the parties and subject matter of this Cause.

2. Summary of Request For Extension. The Request for Extension seeks the extension of the previously approved adoption by Golden Harbor of an Interconnection Agreement between Ameritech Indiana and AT&T. The Ameritech Indiana/AT&T Agreement expires February 25, 2000. Golden Harbor seeks an extension of its adoption of the Ameritech Indiana/AT&T Agreement to February 25, 2001. Golden Harbor alleges that the extension is warranted due to the fact that Ameritech-Indiana has "created an unlawful barrier to entry for its competitors" that violates Section 252(i)'s statutory provision designed to allow new entrants to enter the market expeditiously. In support of its allegation, Golden Harbor argues that although the Commission issued an Order on December 16, 1998, instructing Ameritech Indiana to allow Golden Harbor's adoption of the Ameritech Indiana/AT&T interconnect agreement without modification, Ameritech Indiana ignored Golden Harbor's designation of an interconnection point that was provided to Ameritech Indiana on December 28, 1998. Ameritech Indiana continued to insist upon modification and execution of the approved Ameritech Indiana/AT&T Agreement and would not take the necessary steps to interconnect with Golden Harbor until a revised interconnection agreement was executed. Thus, Ameritech Indiana did not begin construction of the necessary trunks until some time after May 11, 1999. Golden Harbor alleges that these actions on the part of Ameritech constitutes unreasonable behavior.

3. Discussion and Findings. At the hearing held in this Cause, Ameritech Indiana presented the testimony of Devang Patel and Kyle Cordes. Mr. Patel admitted that after the Commission issued its December 16. 1998 Order which approved Golden Harbor's adoption of the agreement without footnotes, , Ameritech Indiana continued to insist upon inclusion of footnote modifications to the interconnection agreement. He also admitted that the interconnection activation date was modified due to the lack of an executed interconnection agreement, although the Commission had ruled on December 16 that such an executed agreement was not necessary and had issued a General Administrative Order on December 8, 1998 ("GAO"), stating that the only information required to be filed by a party adopting an existing agreement was the fact that it was adopting a previously approved agreement and a designation of the interconnection point. The insistence that a new agreement be executed is in direct contravention to the GAO which states that a new interconnection agreement is not to be executed or filed. Mr. Cordes testified regarding the reasonableness of the 150 day lag between designation of the interconnection point and completion of construction.

In our comments to the FCC regarding the merger of Ameritech Corporation, parent of Ameritech Indiana, and SBC Communications, Inc., the Commission expressed its frustrations with the unreasonable delay that was being experienced by potential competitors. The Commission stated:

> The IURC continues to receive complaints from CLECs that are attempting to negotiate interconnection agreements with Ameritech Indiana. For example, despite repeated explanations to Ameritech Indiana's legal counsel and staff, Ameritech Indiana maintained that it could unilaterally insert new language or revise existing language in a previously approved interconnection agreement when a CLEC seeks to adopt such agreement pursuant to section 252(i) of TA-96. IURC Telecommunications Division staff, the General Counsel's Office, and the presiding Administrative Law Judges have all explained to Ameritech Indiana numerous times that a CLEC may adopt an existing interconnection agreement by simply submitting a letter to the IURC. The only terms that must be determined are: (1) the physical point of interconnection, and (2) the date upon which Ameritech Indiana will provision service to the other party. Ameritech Indiana continued to ignore these directives, which were outlined in the IURC's Amended General Administrative Order 1998-1, for several months. Moreover, Ameritech Indiana appears to have misrepresented the IURC's position on the implementation of interconnection agreements to other carriers during negotiations. For example, by using these tactics, Ameritech Indiana delayed the execution of its interconnection agreement with Golden Harbor of Indiana, Inc. for almost five months. The IURC fears that Ameritech Indiana's continued failure to abide by our orders will result in delay or denial of interconnection between Ameritech Indiana and other carriers on a prospective basis.

Ind. Utility Regulatory Commission Comments In Re: Application of Ameritech Corp. and SBC Communications, Inc. CC Docket 98-141 (F.C.C. June 16, 1999).

We find that Ameritech Indiana's delay in permitting the adoption and implementation of the interconnection agreement by Golden Harbor was unreasonable and in direct contravention of Section 252(i) and this Commission's December 16, 1998 Order and our GAO governing 252(i) adoptions. Several other states have dealt with similar attempts to delay competition by incumbent local exchange carriers. In *Airtouch Paging of California v. Pacific Bell*, 1999 U.S. Dist. LEXIS 16615 (N.D. Cal. 1999), the Federal District Court found that Pacific Bell's actions were unreasonable and ruled that the "same terms and conditions" required by Section 252(i) "dictates that Airtouch be provided an agreement which runs two years from the date of the filing of the Airtouch and PacBell agreement." In Delaware, Bell Atlantic's conduct delaying adoption of an interconnection agreement resulted in the Delaware Commission extending the expiration of the agreement by six months. *In the Matter of the Petition of Global NAPs south*, 1999 Del. PSC LEXIS 97. (This decision is currently under appellate review.) In New Jersey, Bell Atlantic's refusal to permit Global NAPs to adopt another interconnection agreement resulted in the New Jersey

Commission's determination that the agreement should be extended by 19 months. *In RE Global NAPs, Inc.*, Docket No. T098070426; P.U.R. 4th, New Jersey Board of Public Utilities (7/12/99). In Pennsylvania, Bell Atlantic again refused to allow Global NAPs to adopt the terms of an interconnection agreement and the Pennsylvania Commission extended the agreement for another seven months. *Petition of Global NAPs*, 1999 Pa. PUC LEXIS 58.

Pursuant to I.C. 8-1-2-5, every public utility shall for a reasonable compensation permit the use of its property by any other public utility whenever public convenience and necessity require such use. Such use so ordered and such physical connection so ordered shall be made and such conditions and compensations may be prescribed by the Commission if the parties fail to agree. Having considered the evidence presented by the parties, and their legal briefs, we find that the interconnection agreement between Golden Harbor and Ameritech Indiana should be extended for a period of six months due to the Ameritech Indiana's actions subsequent to the Commission's issuance of an order approving the adoption on December 16, 1998. Ameritech Indiana's actions were contrary to Indiana law. Pursuant to Indiana law, this Commission has the ability to prescribe the terms and conditions of interconnection. The six month extension granted herein should not result in significant economic burdens to Ameritech Indiana. It is designed to provide Golden Harbor with sufficient time to operate under the adopted Agreement prior to being forced into negotiations with Ameritech Indiana on a subsequent agreement. Ameritech Indiana, is hereby required to negotiate in good faith and in a timely manner with Golden Harbor to assure that there is no disruption in service resulting from the extension of the term of the interconnection agreement and any attendant negotiations as to any subsequent interconnection agreement. The Commission recognized that Ameritech's bargaining position is superior in its Order approving the AT&T/Ameritech agreement, stating "the greater likelihood is that in only three years' time Ameritech Indiana will continue to enjoy the superior bargaining position of a former ILEC." Cause No. 40571 INT-01 (Nov. 17, 1996), p. 31. The Commission in that order also recognized that it is not in the public interest for the Commission to spend limited resources arbitrating issues on renegotiations. Order, p. 31. With the extension granted herein, it is the Commission's expectation that Ameritech Indiana and Golden Harbor will, in good faith, negotiate a renewal of the interconnection agreement and not return to the Commission in five months requesting arbitration.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The request by Golden Harbor of Indiana, Inc. for an Extension of the Interconnection Agreement between Ameritech Indiana and itself which was submitted for Commission approval on October 20, 1998, be, and is hereby, granted, consistent with the findings set forth above.

2. The adoption of the Ameritech Indiana/AT&T Interconnection agreement shall remain in full force and effect for an additional six months, up to and including August 25, 2000.

3. This Order shall be effective on and after the date of its approval.

McCARTY, RIPLEY, AND ZIEGNER CONCUR; KLEIN, SWANSON-HULL ABSENT:
APPROVED:

JAN 19 2000

I hereby certify that the above is a true and correct copy of the Order as approved.

Joseph M. Sutherland
Secretary to the Commission